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Chair: Mr. Salvioli

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant

Initial report of South Africa (CCPR/C/ZAF/1; CCPR/C/ZAF/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of South Africa took places at the Committee table.*

2. **Mr. Jefferey** (South Africa), introducing the initial report of South Africa, said that since the advent of democracy in 1994 the Government had made strides in pushing back the main pillars of the apartheid legacy of inequality, unemployment and poverty. The country had demonstrated its commitment to peace, security and justice, and measures had been adopted to heal past divisions and establish a society based on democratic values and fundamental human rights. Racism persisted but South Africa was seeking to combat it and to promote reconciliation through, for example, the Truth and Reconciliation Commission and the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance. The Government was seeking to transform society and to build a new nation in line with values enshrined in the Constitution such as human rights and freedoms, equality, non-discrimination and the rule of law. The priority was to provide primary health care, education and social assistance to the population, and to deliver comprehensive social security including housing, water, sanitation and electricity to previously disadvantaged groups.

3. The right to equality and non-discrimination was entrenched in the Constitution and a number of laws had already been passed to give effect to that provision. A bill addressing hate crimes and hate speech was due to be presented for consideration by Parliament in 2016 and approval had recently been given to the White Paper on the Rights of Persons with Disabilities. The Department of Justice and Constitutional Development had set up a national task team to counter discrimination and violence against people based on their actual or perceived sexual orientation or gender identity, and South Africa had recently hosted a regional seminar aimed at finding practical solutions to that issue. Equality and non-discrimination were also the basis of the Government's approach to indigenous groups. The Traditional and Khoi-San Leadership Bill aimed to recognize Khoi-San communities and leaders, and provided for the establishment of the Pan South African Language Board to promote the use of, among others, the Khoi, Nama and San languages.

4. Gender equality was enshrined in the Constitution. South Africa was leading the continent in that regard and could boast an unprecedented body of laws and institutional mechanisms for promoting and empowering women. The blueprint for gender mainstreaming was the National Gender Policy Framework and a Ministry for Women had been set up in the Presidency. Women accounted for 41 per cent of parliamentarians, around 60 per cent of chief magistrates and 45 per cent of other magistrates.

5. Violence against women and children was a subject of paramount importance and had been the subject of extensive legislative reforms. Sexual offences courts had been reinstated and the police had established the Family Violence, Child Protection and Sexual Offences Units. The Department of Social Development had set up a number of shelters and centres throughout the country to empower and provide support for victims of gender-based violence, and there were 55 Thuthuzela Care Centres, which had been recognized by the United Nations as a best practice model in the response to gender violence. A call centre for victims of gender-based violence handled around 1,500 calls a day and had also won a number of international awards. Anti-violence campaigns sought to mobilize men and boys, and make them part of the solution in eradicating violence against women.

6. There had been a constant improvement in the management of persons deprived of liberty. The number of remand prisoners had fallen from 55,649 in 2007 to 41,224 in 2015

while incarceration rates had dropped from 403 per 100,000 population in 2004 to 290 in 2014. The Department of Correctional Services was committed to caring for female inmates in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders and 17 mother and baby units had been set up inside prisons. With the introduction of the 2008 Child Justice Act, measures were being taken to expedite cases involving children in conflict with the law and the number of children in correctional facilities had dropped dramatically. Complaints received from inmates were processed electronically and investigated by independent correctional centre visitors; the data collected was made available to stakeholders.

7. South Africa accepted the criticism that the police had sometimes reacted outside the law with regard to protests, but suspected offenders were dealt with through the legal system and internal disciplinary procedures. A panel of international experts had been established to consider the recommendations of the Marikana Commission of Inquiry and a task team had been created to look into public order policing. The Independent Police Investigative Directorate acted as a monitoring body and investigated claims of police misconduct. The 2013 Prevention and Combating of Torture of Persons Act provided for the prosecution and punishment of persons responsible for acts of torture.

8. South Africa was a major destination for asylum seekers, migrants and persons looking for better economic and social opportunities. Under law, undocumented migrants could be detained for a period of 30 days with a possible court-mandated extension of 90 days. Those awaiting deportation to their countries of origin were held at the Lindela Repatriation Centre which was regularly monitored by the South African Human Rights Commission and the International Committee of the Red Cross. The Government had strongly condemned recent attacks against migrants, and law enforcement agencies had moved to contain the violence and stop it spreading to other parts of the country. Work to restore peace and order was being coordinated at the highest level. In April 2015 President Zuma had convened the first of a series of meetings with stakeholders to discuss migration and integration policies in South Africa. Those issues were also being examined by three separate interministerial committees.

9. **Mr. Shany** said that he recognized the independence and effectiveness of the South African Human Rights Commission. However, he was concerned that, while its budget was sufficient for its ordinary operations, it lacked emergency funding for response to unplanned events such as the recent xenophobic violence. He asked the delegation to comment on disquieting information the Committee had received that certain watchdog bodies were not fully independent of the institutions they were supposed to be monitoring. Specifically, he wondered whether the State party was reviewing the adequacy of its protection mechanisms.

10. In view of the fact that only two communications from South Africa had been submitted under the Optional Protocol to the Covenant, he wondered whether there was sufficient awareness about the Protocol and the Committee's work in that regard. He asked what measures had been taken in the *Bradley McCallum v. South Africa* case, including details about any disciplinary measures and appeal proceedings. In the case of the President of Sudan, the delegation should explain why a decision by a national court to implement an international obligation had not been heeded.

11. In light of information suggesting that the handling of violence against foreigners had not improved, he wished to know how racism and xenophobia among law enforcement officials was being monitored and whether recommendations on the role of the police issued by the Human Rights Commission had been implemented. Recent court rulings criticizing the practice of selective shop closure seemed to confirm claims that the police were hostile to migrants. He asked whether it was true that as many as 900 foreigners had died in xenophobic attacks throughout the country over the previous eight years and that

very few convictions had been obtained. If so, he wished to know what steps were being taken to address that problem. He commended South Africa for the integration strategy it was currently drafting. It was an important step which would help to reduce tension between migrants and locals. He wished to know whether the strategy also addressed the situation of internally displaced persons who had lost their homes in xenophobic attacks.

12. He praised the State party for its hate crimes and hate speech bill and for the broad consultations undertaken by its Government. However, he was concerned about the time it was taking to develop a comprehensive policy on such an urgent matter. It would be useful to learn whether the bill would cover hate speech on social media and in the workplace. Although the State party had taken commendable steps, it appeared that lesbian, gay, bisexual, transgender and intersex (LGBTI) persons still suffered discrimination when accessing State health facilities or seeking redress for crimes. He wished to know whether any specific training concerning the special needs of LGBTI persons was offered to health workers and law enforcement officials. He asked the delegation to respond to concerns about the implementation of the 2003 Alteration of Sex Description and Sex Status Act and about the use of non-consensual treatment affecting intersex persons.

13. **Ms. Cleveland** said that she would welcome further information regarding the amount of financial resources allocated to the national five-year plan to combat HIV/AIDS. She also wished to know how many persons had received treatment under the plan and what efforts had been made at national level to combat the stigma and discrimination experienced by persons living with the disease. Similarly, it would be interesting to learn what steps had been taken to guarantee equal access to HIV/AIDS treatment for vulnerable groups, such as women and persons living in remote and rural areas, and to ensure that disability grants were awarded fairly and consistently.

14. As to the deaths of 44 miners in Marikana, she asked what measures had been taken to effectively investigate, prosecute and punish the perpetrators. Concrete data on the number of prosecutions and convictions handed down in those cases would be appreciated. She also wished to know whether the State party intended to amend the South African Police Service Act and issue updated policing guidelines on appropriate use of force so as to prevent the reoccurrence of such events in future. In that connection, she requested further information on the composition, mandate and findings of the Panel of International Experts appointed to consider the recommendations of the Farlam Commission of Inquiry into the miners' deaths. What steps had been taken to investigate the Lonmin mining company's involvement in the Marikana incident?

15. Regarding cases of torture, she asked whether specific provisions guaranteeing access to legal aid and the right to redress for victims of torture had been incorporated into the Prevention and Combating of Torture of Persons Act. Similarly, she wished to know whether police officers responsible for investigating cases of torture had received the necessary training to deal with victims of torture and ill-treatment sensitively and effectively.

16. **Mr. Bouzid** said that he would like detailed information on the number of cases of *ukuthwala* (forced marriages of women and girls to older men through abduction) reported across the country, including the number of perpetrators brought to justice. He also wished to know whether the State party intended to prohibit polygamy and the killing of "witches". In addition, he asked whether concrete steps had been taken to amend the Children's Act so as to prohibit virginity tests for girls and to implement effective awareness-raising campaigns to combat traditional and family pressures on girls and women in favour of that practice. Information on progress made towards the prohibition of corporal punishment of children in all settings, including in the home and at school, would also be welcome.

17. Lastly, he requested detailed statistics on the number of persons residing in centres for victims of trafficking and their average length of stay. The delegation should indicate what measures had been taken to prohibit, prosecute and punish labour brokers involved in the exploitation of migrant workers and trafficking victims.

18. **Mr. Muhumuza** asked what efforts had been made to implement legislation aimed at preventing and punishing sexual and gender-based violence and to encourage victims to report such acts. He said he also wished to know whether training had been provided to law enforcement officials and health service personnel to ensure that they were able to respond effectively to all forms of violence against women. Similarly, he asked what steps had been taken to ensure that victims of domestic violence, particularly women with disabilities and migrant women, had access to redress, protection and rehabilitation and that perpetrators were prosecuted and duly punished.

19. **Mr. Iwasawa** asked what measures had been taken to uphold the provisions of the Alteration of Sex Description and Sex Status Act. He also wished to know why 11 out 45 cases before the National Task Team on Gender and Sexual Orientation-based Violence Perpetrated against LGBTI Persons had been withdrawn. Information on policies adopted to protect the rights of lesbian, gay, bisexual, transgender and intersex children and the current status of the policy framework on combating hate crimes, hate speech and unfair discrimination would also be helpful.

20. **Mr. Seetulsingh** said that he would like a detailed explanation of the suspension from office of the Head of the Independent Police Investigation Directorate in March 2015. It would also be interesting to learn what measures had been taken to improve the transparency of the investigations undertaken by the Independent Police Investigation Directorate into human rights violations perpetrated by the police and to increase the conviction rates for police officers found guilty of excessive use of force or violence. In that connection, he requested further information on the outcome of the trial involving 27 members of the Cato Manor Police Organized Crime Unit.

21. Detailed information on the composition, mandate and budget of the Judicial Inspectorate of Prisons would also be welcome, including whether the State party intended to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to appoint the Judicial Inspectorate as the national preventive mechanism. Lastly, he wished to know what measures had been taken to ensure that private prisons complied with domestic legislation and international standards on prisoner welfare and management in the same manner as State-run prisons. Did the State party intend to increase the overall amount of funding provided to prisons to improve general detention standards?

22. **Mr. de Frouville**, referring to the Choice on Termination of Pregnancy Act, which had marked a major step forward for women's rights and could serve as an example of best practice for other States, asked the delegation to comment on the impact of that legislation in terms of a decrease in the maternal mortality rate and recourse to unsafe abortions.

The meeting was suspended at 4.25 p.m. and resumed at 4.50 p.m.

23. **Mr. Jefferey** (South Africa) said that chapter 9 of the Constitution provided for a specific category of institutions to support constitutional democracy, including the South African Human Rights Commission, the Commission on Gender Equality, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and the Public Protector. Those institutions were accountable only to the National Assembly and they approached Treasury directly for funding, which was transferred to them through the relevant government department. For example, the allocation for the Human Rights Commission and the Public Protector was ring-fenced in the budget of the Department of Justice. The National Assembly was currently reviewing

institutional arrangements and considering whether some of the institutions might be merged. Concerns had been raised, for example, about the Public Protector investigating complaints by public servants that could be referred to the Public Service Commission.

24. The problem in the McCallum case was that he had brought his case before the Committee before having exhausted domestic remedies in South Africa. He had maintained that he could not bring his claim before the domestic courts because it had prescribed, but South African legislation allowed for condonation if a claim had prescribed. In fact, subsequent to Mr. McCallum bringing the case before the Committee, he and 230 other prisoners had applied for condonation, which had been approved, and they had then proceeded with a civil case for damages. The number of plaintiffs in that case had later been reduced to two — Mr. Siko and Mr. Mbena — with the others reserving their right to pursue their case. The court had been scathing of the evidence and had dismissed the case; the Committee would be provided with a copy of the judgement. An appeal of that decision was under way, and, if successful, the remaining 229 claimants might wish to pursue their case.

25. The South African Government took very seriously the case of President Al-Bashir of the Sudan. It had been its understanding that the Heads of State of all members of the African Union could attend the summit in South Africa and that legislation on immunities would override the domestication of the Rome Statute of the International Criminal Court. Leave to appeal had been refused by the North Gauteng High Court on the basis that it was moot now that President Al-Bashir had left the country. Nonetheless, the matter had been brought before the Supreme Court of Appeal, where it was awaiting judgement.

26. With regard to hate crimes, the Government's original intention had been to develop a policy, but in the end it had opted to draft legislation in order to expedite matters. Hate crimes were invariably already crimes under existing legislation. For example, rape was already a very serious crime, regardless of whether it was committed against a lesbian woman for homophobic reasons. A hate crimes working group of civil society representatives, including LGBTI and Jewish organizations, had been consulted on the draft bill. Following the incidents on social media, it had been decided to include hate speech in the bill, while taking into account the constitutional provisions on freedom of expression. Such freedom must not constitute advocacy of hatred based on race, ethnicity, gender or religion and must not constitute incitement to cause harm.

27. Complaints from the LGBTI community concerning the conduct of the Department of Home Affairs in the application of the Alteration of Sex Description and Sex Status Act and the Civil Union Act, for example, were often overly broad; specific details should be provided. The National Task Team on Lesbian, Gay, Bisexual, Transgender and Intersex People was co-chaired by the Director-General of the Department of Justice and a representative of civil society and membership was open to all civil society organizations. Members of civil society were urged to raise any problems they had encountered in their dealings with government on LGBTI issues in that forum. The police was currently reviewing 11 cases of crimes against LGBTI people in order to assess whether there was sufficient evidence to initiate legal proceedings.

28. As the Prevention and Combating of Trafficking in Persons Act had only come into effect in August 2015, the information on its implementation was limited. Trafficking for sexual purposes and trafficking of children had already been classified as crimes, but the Act had widened the scope of the crime of trafficking to include labour exploitation, provided for support mechanisms for victims and specifically criminalized the practice of forced marriage. The conviction of a person claiming to have followed the traditional practice of *ukuthwala* had taken place prior to the entry into force of the Act.

29. **Ms. Rotmann** (South Africa), referring to the Committee's views in the McCallum case, said that, pursuant to a legal opinion that the institution of disciplinary proceedings against the officers involved in the incidents some five or six years after the alleged transgressions would be unconstitutional and constitute unfair labour practice, the matter had not been pursued. The inspecting judge who headed the Judicial Inspectorate was a retired or active judge of the High Court who was appointed by the President and continued to receive the salary and privileges attached to the office of a judge. The budget for that office came under the Department of Correctional Services, but was allocated directly without interference from the Department.

30. There were two private correctional facilities in South Africa; although operation of the facilities had been outsourced, the Government's constitutional obligations in relation to oversight had not, and were the same as for all other facilities. Visits were conducted by the correctional services inspectorate, the South African Human Rights Commission, the parliamentary bodies and judges. There were permanent controllers in both facilities to monitor implementation of the contract, ensuring that all legislative parameters were respected. The construction of additional facilities was being considered to ease overcrowding in prisons but the Government was aware that other interventions were also required. Efforts were being made to identify more appropriate placements for sentenced prisoners serving terms of less than 2 years. A good deal of success had been achieved with remand detainees, and the size of the remand population in one of the most overcrowded facilities in Johannesburg had been reduced from 8,000 to 4,000. It was now necessary to replicate that success in other parts of the country.

31. **Mr. Dangor** (South Africa) said that in the first ten years following the passing of the Choice on Termination of Pregnancy Act, mortality and morbidity linked to unsafe abortions had decreased by 90 per cent, although there were some unsubstantiated reports that the figures had again started to rise in the past five years. Key challenges included ensuring that all designated abortion facilities were fully operational and reducing the stigma that prevented some young women from accessing public facilities. There were insufficient data on the numbers of women accessing unsafe abortions, but statistics were kept on the number of septic miscarriages. An adolescent sexual and reproductive health strategy had been approved with the aim of ensuring that all young people, including from the LGBTI community, were catered for and received comprehensive sexual education. Virginity testing was prohibited by law for children and women over 18 must provide written informed consent. Efforts were being made to change societal values in that area. The issue of discretion in the allocation of disability grants had become less of a concern following the massive roll-out of the antiretroviral programme for persons living with HIV. However, a harmonized assessment tool for disability grants was to be piloted so that all doctors would be using the same template and thus avoid using their discretion.

32. **Mr. Nwaila** (South Africa) said that the practice of *ukuthwala* was recognized under customary law, provided that it was carried out in accordance with the bill of rights and the Constitution. A distinction should be made between abduction and *ukuthwala*. In the latter practice, an adult couple who wished to marry but who faced obstacles, for example if the man did not have enough cattle, would agree that the woman should be taken by the man to his parents' home. They would then inform the woman's parents of her whereabouts and would keep her with them until the marriage rights had been finalized. Some individuals were abusing the custom by abducting minors, which was not part of the tradition of *ukuthwala*.

33. Polygamy had long been practised by local tribes, though it had not been officially recognized in South Africa until the democratic era. Polygamy was allowed under certain conditions, one of which was that the husband's current wives must agree to him taking a new wife. Women were granted property rights on an equal footing with men, which had

not previously been the case. People living in rural communities where the practice was followed welcomed its legal recognition.

34. Unfounded accusations of witchcraft and subsequent persecution had been a significant problem in the early 1990s. In recent years it had become less common, as the Commission for Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and the South African Law Reform Commission were both working to raise awareness and address the problem.

35. **Mr. McKay** (South Africa) said that officials in the Ministry of Home Affairs received continuous training to ensure that the legal provisions on the alteration of the sexual identity of transgender and intersex persons were uniformly applied.

36. **Mr. Dangor** (South Africa) said that corporal punishment was prohibited in schools and that the proposed revision to the Children's Act included provisions that would also prohibit the practice in the home.

37. **Ms. Shabangu** (South Africa) said that, once the Farlam Commission of Inquiry had concluded its work after a three-year process, the President had set up a task force including international experts with a view to improving professionalism within the police force. The current police commissioner had been suspended, and an inquiry would be conducted into her conduct. Investigations into the conduct of various police officers involved in the Marikana incident were being conducted by the Independent Police Investigation Directorate, and some cases had been referred to the prosecuting authority.

38. Labour brokers were no longer allowed to hire and fire workers at whim. Rather, they must comply with the established conditions of employment, including the minimum wage. Pursuant to the Labour Relations Act, no one, including labour brokers, was allowed to contract workers for more than 12 months without registering them as full-time employees.

39. **Mr. Jefferey** (South Africa) said that the charges against the police officers accused in the Cato Manor case had been reinstated. The main trade union in the country was strongly opposed to labour brokering, but it was a complex issue that could not be addressed simply by banning the practice.

40. The Department of Basic Education was working to promote tolerance and protection for the rights of LGBTI young people in schools by using mechanisms that encouraged debate. For example, the topic set for the moot court competition held in 2015 had involved a lesbian student at a Catholic school who wanted to take her same-sex partner to a school dance.

41. The Torture Act criminalized torture and established civil remedies that applied in cases of torture. Given that the Government was regularly sued by individuals and forced to pay damages, those remedies appeared to be working effectively, and the Government saw no need to change them. The State intended to adopt the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but it wished to develop its national preventive mechanism before doing so. Discussions were under way with the Judicial Inspectorate of Prisons and the Independent Police Investigation Directorate on their inclusion in that mechanism, but other bodies would be needed to fill the gaps. It had been proposed that the South African Human Rights Commission might coordinate the various bodies that would make up the mechanism.

42. The large waves of migration arriving from Asian and especially other African countries posed a major challenge. His delegation was surprised by the claim that 900 foreigners had been killed in violent attacks. His Government's policy was to integrate migrants, including refugees, into society. Poverty and competition in the labour market between South Africans and migrants with little to no formal education was often at the

root of the tensions between citizens and migrants. Citing two high-profile cases of murdered Mozambican migrants, he noted that in both cases the perpetrators had been convicted. The head of the Independent Police Investigative Directorate had been suspended based on claims that he had altered a report on the illegal rendition of a person to Zimbabwe who had subsequently been killed.

43. **Mr. Iwasawa** noted that, according to the Constitution, a self-executing provision of an agreement that had been approved by Parliament was considered to be law in South Africa unless it was inconsistent with the Constitution or an act of Parliament. That seemed to contradict paragraph 95 of the State party's core document (HRI/CORE/ZAF/2014), which stated that provisions of an international treaty could not be invoked before or directly enforced by the courts and that they must first be translated into South African laws or administrative regulations. He asked the delegation to comment on that apparent contradiction and to clarify the status of the Covenant in the national legal order.

44. **Ms. Waterval** asked whether corporal punishment was prohibited in childcare institutions. She said that the delegation should also clarify the legal situation regarding polygamous marriage and equality for women in matters of inheritance.

45. **Ms. Cleveland** requested further information on the number and current status of cases referred for possible criminal investigation in relation to the Marikana incident. She said that the delegation should explain the wide disparity between the number of reported cases of sexual offences and the much lower number of convictions. She wished to know about the obstacles preventing victims of sexual and gender-based violence from obtaining free legal aid. Lastly, it would be interesting to learn whether the State party planned to collect disaggregated data on different types of gender-based violence.

46. **Mr. Shany** pointed out that, in the McCallum case, the State party had not appeared before the Committee and had not submitted any claim regarding the exhaustion of domestic remedies. He said that the court judgement cited by the delegation was not a class action and concerned only 2 of the 231 individuals who had made allegations. He therefore wished to know the current status of the other 229 cases. It was unclear why the State had waited five years to begin the disciplinary proceedings. Given the seriousness of the Committee's findings, he questioned whether it was reasonable to categorize the initiation of disciplinary proceedings as an unfair labour practice.

47. He drew the delegation's attention to paragraph 24 of the Committee's general comment No. 28, which stated that polygamy was inconsistent with the principle of equality of treatment with regard to the right to marry. He therefore wished to know whether the State party was working to make polygamy less acceptable in South African society.

48. **Mr. Politi** requested clarification regarding the exact subject matter and stage of proceedings in the case before the Supreme Court of Appeal concerning the order to arrest President Al-Bashir. The jurisprudence of the International Criminal Court left no room for doubt regarding the immunity of Heads of State and the obligation of South Africa to arrest President Al-Bashir when he was in the country.

49. **Mr. Bouzid** said that children who underwent traditional rites of passage into adulthood in certain communities were deprived of food and exposed to life-threatening conditions. Indeed, a number of children had died as a result of those initiation rites. He therefore wished to know whether the Government intended to intervene and exert some control over the situation.

The meeting rose at 6 p.m.